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The Stolen Museum: Have United States Art Museums Become Inadvertent Fences for Stolen Art Works Looted by the Nazis in Word War II?

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THE STOLEN MUSEUM: HAVE UNITED STATES ART MUSEUMS BECOME INADVERTENT FENCES FOR STOLEN ART WORKS LOOTED BY THE NAZIS IN WORLD WAR II?

Barbara J. Tyler*

I. INTRODUCTION

Everything passes-Robust art
Alone is eternal.
The bust
Survives the city.

*Theophile Gautier*¹

It is unthinkable; yet suddenly, over fifty years after the demise of Hitler and the Third Reich, Nazi loot has been discovered housed in some of America's finest public art museums.² Europe is finally putting World War II to rest, but the fallout from the ransacking of art by Hitler's troops has hit the American cultural scene, wreaking havoc in the art world among museum curators as well as art dealers,³ and putting into question the fate of

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1. JOHN BARTLETT, *BARTLETT'S FAMILIAR QUOTATIONS* 538 (Emily Morison Beck ed., 15th ed. 1980). This quote is from the poem "L'Art," written by Gautier in 1832, translated from the French version: "Tout Passe-L'art robuste/Seul a l'éternité/Le buste/Survive le site."

2. See Jonathan Mandell, *Art, Artists and the Nazis: The Modern Fallout*, *NEWSDAY*, May 3, 1998, at D16. One author points out that the reason that so many artworks are surfacing over 50 years after World War II is that the documentation to prove ownership was previously unavailable because of the closely guarded lists of the Nazis, the Soviet Union, Switzerland, Germany, and France. These governments have only slowly declassified their archives since the end of the Cold War. See Mary Abbe, *Nazi Art-Theft Claims Challenge Museum's Ethics*, *MINNEAPOLIS STAR TRIB.*, May 7, 1998, at 1E.

3. This Article will focus on the legal claims and doctrines which can be used to require American museums to return looted art. The troubling aspects of the legal risks facing collectors, dealers, and auction houses that find themselves in possession of stolen or smuggled art is left for other commentators. The provenance, or history of ownership of art objects, is evaluated constantly by both art dealers and museums. See, e.g., Raul Jauregui, Comment, *Rembrandt Portraits: Economic Negligence in Art Attribution*, 44 *UCLA L. REV.*

some priceless collections.⁴ The Nazis, spurred on by Hitler, who had an admiration for the great painters as well as a hatred for Jews, looted European art museums and private collections on a monstrous scale.⁵ The art taken was often stolen from Jewish collectors who were murdered in the Holocaust.⁶

The search for Nazi confiscated art objects took to the airwaves when ABC News *Nightline* recently publicized a plea for the return of a claimed family-owned painting from the Minneapolis Museum of Art.⁷ Officials at

1947, 1950 (1997) (advocating the imposition of a strict liability standard on art dealers for selling fraudulent artworks as the "fairest and most cost-efficient solution to this problem").

4. Mary Abbe, *Institute Is Not Alone in Stolen-Art Ownership Dispute: Museums Across the Country Are Facing Claims That Some of Their Works of Art Were Among the Loot Taken by the Nazis During World War II*, MINNEAPOLIS STAR TRIB., Apr. 30, 1998, at 3B. This Article will not deal with the disclosure of unethical conduct by auction houses such as Christies and Sotheby's. For books on the subject of the duty of auction houses to investigate the provenance or background of art entrusted to them for sale, consult: WILLIAM HONAN, *TREASURE HUNT* (1997); PETER WATSON, *SOTHEBY'S* (1997).

5. See HECTOR FELICIANO, *THE LOST MUSEUM: THE NAZI CONSPIRACY TO STEAL THE WORLD'S GREATEST WORKS OF ART* 18 (1997). This work of investigation and study, which took the author seven years to complete, chronicles the paths and collections of several very influential Jewish families and art dealers: the Rothchilds, the Paul Rosenbergs, the Bernheim-Jeunes, the David-Weills, and the Schlosses. These collections were chosen by the author because of their size and importance, although other families' holdings are also mentioned in some detail. *Id.* at 3. The looted art, mostly taken from Jews, was distributed throughout the world, and some commentators estimate that the Third Reich plundered 220,000 pieces of art, which amounts to about one quarter of all the art to be found in Europe during World War II. Adam Le Bor, *Galleries Must Give Back Nazi Looted Art*, INDEPENDENT (London), July 19, 1998, at 16.

6. Steven Litt, *Looted Art Spurs Ownership Debate: Countries, Museums Spar Over Works Taken by Nazis in World War II*, PLAIN DEALER, Mar. 1, 1998, at 1A. Other authors have dealt extensively with international disputes questioning art ownership, such as the Hermitage Trove debate regarding whether Russia or Germany should own artworks stolen during World War II from Germany and housed in the Pushkin and Hermitage Museums of Russia. The subject of the rightful ownership of this art was extensively addressed by other authors. For general discussions of the subject of the Hermitage trove debate, see the following: Steven Costello, *Must Russia Return the Artwork Stolen from Germany During World War II?*, 4 INT'L. L. STUDENTS ASS'N J. INT'L & COMP. L. 141 (1997); Elissa S. Myerowitz, Note, *Protecting Cultural Property During a Time of War: Why Russia Should Return Nazi-Looted Art*, 20 FORDHAM INT'L L.J. 1961 (1997); S. Shawn Stephens, *The Hermitage and Pushkin Exhibits: An Analysis of the Ownership Rights to Cultural Properties Removed from Occupied Germany*, 18 HOUS. J. INT'L L. 59 (1995); Seth A. Stuhl, *Spoils of War? A Solution to the Hermitage Trove Debate*, 18 U. PA. J. INT'L ECON. L. 409 (1997).

7. ABC *Nightline* (ABC television broadcast, Apr. 28, 1998) [hereinafter *ABC Nightline*]. Francis Warin, the nephew of noted art collector Alphonse Kann, alleged that a 1911 painting by Fernand Leger called "Smoke over Rooftops," which was donated to the

other museums around the country are also facing similar disturbing claims.⁸ Lawyers for the Seattle Museum of Art recently met with the Rosenberg family, who are the heirs of a Paris gallery owner who fled the Nazis in 1939 and lost his entire art collection.⁹ One Matisse painting, which is claimed to be owned by the Rosenberg family, is housed in the Seattle Art Museum.¹⁰ After unsuccessful non-legal measures ensued attempting to effect the return of the painting, the Rosenbergs sued the Seattle Art Museum.¹¹ The Cleveland Museum of Art is embroiled in a complicated battle over three drawings jointly claimed by both Poland and the Ukraine.¹²

Minneapolis Museum in 1961, was stolen from his uncle's extensive art collection by the Nazis in 1940, shortly after his uncle, Alphonse Kann, fled from outside Paris to London. See Mary Abbe, *Institute of Arts May Have Painting Stolen by Nazis*, MINNEAPOLIS STAR TRIB., Apr. 29, 1998, at 1A.

The search for this painting also was publicized on *60 Minutes* with co-host Morley Safer appearing with Nick Goodman. See *60 Minutes Profile: The Search: 50-Year Family Search for Stolen Painting by Nazis During World War II Finally Found in United States at the Art Institute of Chicago* (CBS television broadcast, July 26, 1998), available in 1998 WL 8973806.

8. See Abbe, *supra* note 4, at 3B. France has made a count and found that museums there held at least 2000 artworks that were either stolen or purchased by the Nazis in World War II. *Id.* This vital information was kept quiet for decades by the museum curators, whose collections eluded discovery until a Puerto Rican journalist, Hector Feliciano, published his book in 1995, in French. *Id.* In April 1997, the art went on display at five of France's most prestigious museums and was even available for viewing on a World Wide Web site. See Judith Warner, *Rightful Owners*, NEWSWEEK, Apr. 14, 1997, at 28.

One author suggested it was not only art that was hoarded by France, but that property and buildings were also seized from Jewish families by the French. This author suggested that the French were not victims of the Nazis but their willing collaborators. See Jeanne Oliver, *History Lessons*, INSIGHT ON NEWS, Mar. 3, 1997, at 43.

9. See Abbe, *supra* note 4, at 3B. The relatives of Paul Rosenberg claim that "Odalisque," a Matisse painting in the Seattle Art Museum, is one that came from Rosenberg's collection after passing through the hands of an unscrupulous German art dealer and an unsuspecting New York gallery. *Id.*

10. *Id.*

11. *Id.*; see *Rosenberg v. Seattle Art Museum*, No. C98-1073 (W.D. Wash. filed July 31, 1998).

12. Litt, *supra* note 6, at 1A. "The Dead Christ" is a 1505 drawing by Albrecht Durer owned by the Cleveland Museum since 1952 and one of the Durer drawings in question. *Id.* These Durer drawings were not privately owned but were from a cultural institute in Poland. *ABC Nightline*, *supra* note 7. After World War II, they were returned to the family who had donated them to the Polish institute. *Id.* The family then authorized the sale of the drawings by an art dealer on the open market. *Id.* According to the Director of the Cleveland Museum of Art, Robert Bergman, the history of the drawings was openly publicized by the Cleveland Museum of Art when they were first purchased. *Id.*

The New York Museum of Modern Art was temporarily ordered by the court not to return a painting on loan to it from a Viennese physician until the rightful owner could be ascertained.¹³ Against this troubling backdrop, the first American case pitting heirs against a private art collector was settled after the suit spent two years languishing in federal court in Chicago; the first case in which heirs have sued a public art museum has been filed in Seattle.¹⁴ Survivors of the Holocaust and their heirs are relegated to financially fending for themselves to recover stolen artworks. The cost of recovering that lost art is staggering.¹⁵ Experts say that claimants must be prepared to spend at least \$100,000 in costs just to begin litigation.¹⁶ One lawyer for such heirs has suggested that if the artwork is worth less than three million dollars, the work should be given up rather than the heirs

13. Roger Hurlburt, *Art Ownership Dispute Shakes Many Museums*, FORT LAUDERDALE SUN-SENTINEL, Feb. 15, 1998, at 6D. Two expressionist paintings by Egon Schiele, "Portrait of Wally" and "Dead City," were loaned to the New York Museum of Modern Art ("MOMA") from Austria for exhibition. *Id.* At first, the Manhattan District Attorney's Office issued an injunction forbidding the return of the paintings because MOMA received letters from two families maintaining the artworks had been stolen from their relatives by Nazis. *Id.* The injunction against the museum was lifted on Wednesday, May 13, 1998, when Acting Supreme Court Justice Laura Drager said the paintings must be returned to Austria. Bill Alden, *Museum Is Cleared To Return Paintings: State Law Protects Art from Gov't Seizure*, N.Y. L.J., May 14, 1998, at 1. No determination of ownership of the paintings was made, but the museum had argued that any other decision would have a chilling effect on ever exhibiting the works of foreign states in United States museums. *Id.*

14. Marilyn Henry, *Recovering Looted Art: A Rich Man's Game*, JERUSALEM POST, Apr. 3, 1998, at 17. This article chronicles the case of *Goodman v. Searle*, No. 96CV06459 (N.D. Ill. filed Oct. 3, 1996), filed in Chicago federal court. The controversy centers on a monotype by Edgar Degas which both parties claim to own. *Id.* In addition, the article tells of efforts to retrieve looted art once owned by private families as well as the recent United States federal legislation introduced to create a presidential commission made up of politicians and private individuals to conduct research and make recommendations to the President regarding the fate of Nazi victims' assets. *Id.*

In federal court in Seattle, Micheline Nanette Sinclair of Paris, the daughter of an art dealer, Paul Rosenberg, and other heirs have filed suit claiming the museum has "Odalisque," a Matisse belonging to them, and seeking its return. Karen Lowe, *Heirs of Jewish French Art Dealer Sue Museum for Looted Matisse*, AGENCE FRANCE-PRESSE, Aug. 5, 1998; *see also* *Rosenberg v. Seattle Art Museum*, No. C98-1073 (W.D. Wash. filed July 31, 1998).

15. Henry, *supra* note 14, at 17. The Goodman family is challenging the ownership of a Degas held by Daniel Searle. *Id.* The Goodman family asserts that the Degas painting was stolen from their grandfather, Friedrich Gutmann, a German Jewish banker who was beaten to death in Theresienstadt Concentration Camp. *Id.* His wife died in Auschwitz. *Id.* The Degas is called "Landscape with Smokestacks." *Id.*

16. *Id.*

expending such exorbitant sums on retrieval efforts.¹⁷ It is clear that legitimate claimants of family-owned art should not be denied justice because someone can outspend them.¹⁸ Some commentators admit that the most despicable defenses used against legitimate claimants are not that the defendant denied knowing the work was stolen, but that either the work was not proven to be owned by the family or that the title to the work was given to the government after the War.¹⁹

The prestigious American public institutions are likewise placed in the position of making a Hobson's choice.²⁰ The museum community is faced with the imminent loss of valued work based on often tenuous claims of ownership, while any delay on the part of the institution in expediting recovery by legitimate claimants sacrifices public relations.²¹ While these public institutions may be inclined to relinquish an artwork and enjoy favorable publicity for their largesse, private collectors are not likely to give up a family treasure without fair compensation.²²

This Article begins with some historical background surrounding the Nazi pillaging of several family collections which may have found their way into American museums. The Article then focuses on what legal and equitable doctrines should be employed in the search for justice in ownership of art works in the United States. The Article advocates that American law must prevail. It must be modified to reject the due diligence rule for replevin. Replevin maintains that good intentions alone cannot abrogate the doctrine of bona fide purchaser: a thief can never pass clear

17. *Id.*

18. *Id.*

19. See generally LYNN H. NICHOLAS, *THE RAPE OF EUROPE: THE FATE OF EUROPE'S TREASURES IN THE THIRD REICH AND THE SECOND WORLD WAR* (1994) (exploring in great detail the taking, the protection, the confiscation, and the family searches for their artwork after World War II).

20. A "Hobson's choice" is the term used for no choice at all. BARTLETT, *supra* note 1, at 917 (citing Richard Steele, *The Spectator*, Oct. 14, 1712, no. 509). It is chronicled that a liveryman, Thomas Hobson, who lived in the 18th century, required all his customers to "take the horse which stood near the stable door." *Id.* Thus, the patrons had no choice of steed at all. *Id.*

21. Henry, *supra* note 14, at 17. The New York Museum of Modern Art was embroiled in a dispute when two artworks they had on loan from the Leopold Foundation of Vienna were temporarily blocked by a subpoena from being returned to Vienna because Rita Reif claimed they were looted from a relative who perished in a concentration camp. Samuel Maull, *Judge Blocks Seizure of Paintings*, *PLAIN DEALER*, May 14, 1998, at A17. A judge ruled on May 13, 1998, that New York law protects borrowed art from government seizure. *Id.*

22. Henry, *supra* note 14, at 17.

title to stolen property to any subsequent transferee no matter how far down in the chain the transferee is or how innocent.²³

Finally, the Article examines the efforts of Congress, as well as private organizations such as the American Association of Art Museum Directors²⁴ and Art Recovery of the World Jewish Congress,²⁵ to devise fair and equitable inquiry into the legitimacy of claims. Cultural property stolen by the Nazis during World War II should be returned to the rightful owners. A fair and equitable way of investigating the legitimacy of ownership claims can and must be found. Voluntary efforts are not enough to satisfy the expediency of replevin. Such legislation is necessary and has been implemented by Congress. The Presidential Advisory Commission on Holocaust Assets in the United States must use its power to provide expedient justice for legitimate claims of Holocaust survivors or their families. It is time for American museums to become allies in the investigation of art thefts and to do the right thing.

II. HISTORICAL OVERVIEW

It is art that makes life, makes interest, makes importance, for our consideration and application of these things, and I know of no substitute whatever for the force and beauty of its process.

*Henry James*²⁶

It was a sad day, not only for millions of the victims of his madness, but for the art world as well, when Hitler, that combination of art lover and

23. See *Autocephalous Greek-Orthodox Church v. Goldberg*, 717 F. Supp. 1374 (S.D. Ind. 1989) (holding that good title was never obtained to the mosaics because the purchaser had a duty to conduct a reasonable inquiry into the circumstances surrounding the sale). The mosaics were unique, culturally significant, and part of the unity of the Republic of Cypress. They were plundered by the Nazis. Title remained with the Greek Church. The court ordered the mosaics to be returned to the Church in Cypress. *Id.*

24. The Association of Museum Directors includes the heads of the 170 largest art museums in North America and has begun an inquiry into ways to settle ownership conflicts while avoiding legal costs. See Litt, *supra* note 6, at 1A. A committee for the Association has just recently finished writing guidelines for museums.

25. See Abbe, *supra* note 2, at 1E. This commission seeks to aid victims of art theft by cross-referencing claims with insurance documents, art catalogs, and Nazi government records. Another search organization is the Holocaust Art Restitution Project formed in September 1997.

26. See BARTLETT, *supra* note 1, at 654 (quoting Henry James from a letter to H.G. Wells, written July 10, 1915).

lunatic, became a world leader.²⁷ At Hitler's direction, the Third Reich looted and hoarded family collections and museums alike in fulfilling Hitler's covetousness for fine art.²⁸ Tens of thousands of works of art were looted, confiscated, destroyed, and hidden.²⁹ Paintings and other artworks that disappeared in the wake of the four years of Aryan madness devoted to stealing cultural art have resurfaced in Eastern Europe, Russia, France, and England.³⁰

Recently, a Swiss historian revealed that hundreds of paintings hanging in Swiss museums, or held in private collections, and worth hundreds of millions in Swiss francs were laundered; the original owners were Jewish.³¹

27. See generally Margaret M. Mastroberardino, *The Last Prisoners of World War II*, 9 PACE INT'L L. REV. 315 (1997). This article investigates the Russian/German controversy regarding ownership of art collections stolen from Otto Krebs and Otto Gerstenberg during World War II. Much of the collection was never seen before and is now housed in Russia in the Hermitage in St. Petersburg or in the Pushkin museum in Moscow.

28. See FELICIANO, *supra* note 5, at 238-39. The author of this book states that, even as Hitler planned his suicide on the evening of April 30, 1945, Hitler's concern was for the paintings he stole. *Id.* at 23. Hitler reportedly stated "[t]he paintings in my collections, which I purchased over the course of years, were not assembled for any personal gain, but for the creation of a museum in my native city of Linz on the Danube. It is my most sincere wish that this legacy be duly executed." *Id.* (citing Louis L. Snyder, *Hitler's Last Will*, in ENCYCLOPEDIA OF THE THIRD REICH (1989)).

29. See FELICIANO, *supra* note 5, at 216. The author compliments the exemplary work of the French Ministry of Culture, which has found 61,000 works and returned them to France. More than 80% of these were later returned to their former owners.

30. *Id.* at 238. The most recent findings regarding looted art have uncovered hundreds of works located in England. Commentators speculate that they were bought by English dealers from Switzerland at ridiculously low prices during the War years. John Harlow, *Jews Search for Nazi Art Hoard Hidden in London*, SUNDAY TIMES (London), June 28, 1998, at 7.

31. Tani Freedman, *Hundreds of Nazi Looted Paintings in Swiss Museums and Collections*, AGENCE FRANCE-PRESSE, Apr. 5, 1998; see also *Sworn to Secrecy: Nazi Gold* (The History Channel debut broadcast, July 13, 1998) [hereinafter *Nazi Gold*]. This one-hour television broadcast, hosted by Roger Mudd and narrated by Charlton Heston, discussed the post World War II attempts by the allies in Operation Safe Haven to conduct searches for plundered gold and art. *Id.* Swiss "neutrality" was shown to be a farce designed to enhance the economic status of the country using both the axis powers and the allied European countries in the quest for riches. *Id.* The Swiss were sent plundered artworks. *Id.* The Swiss Central Banks have been estimated to have had over 621 million dollars in looted gold. *Id.* Commentators included Hector Feliciano and Francis Warin. *Id.* Feliciano pointed out that, after the War, Swiss banks virtually ignored claims for the return of any personal assets. *Id.* The banks required proof that the original owner was dead. *Id.* The death camps gave no death certificates. *Id.* If death could be proven, then the surviving relatives were required to prove they were the only Swartz, or Gutmann, or the like, to whom the money could possibly belong. *Id.*

This revelation comes at a time when, to the embarrassment of the Swiss, they are still reeling from the class action suits brought against their banks by Holocaust survivors and their heirs demanding billions of dollars in compensation for the raiding of dormant bank accounts.³²

Against this tableau, the United States faced the first suit pitting the heirs of a German Jew against a United States collector, as well as the first suit in which the heirs of a prominent Jewish art dealer have sued a United States public art museum.³³ In response to allegations that plundered works were here in the United States, a bipartisan group of congressmen introduced legislation to create the Commission on Holocaust Assets in the United States.³⁴ The story of some of the families who have lost treasures follows.

32. *Nazi Gold*, *supra* note 31. Indeed, one historian, Thomas Buomberger, has written a book scheduled to be published in the near future in which he names the people involved in the very lucrative business of selling plundered Nazi objects. See generally Jodi Berlin Ganz, *Heirs Without Assets and Assets Without Heirs: Recovering and Reclaiming Dormant Swiss Bank Accounts*, 20 FORDHAM INT'L L.J. 1306 (1997) (describing, in a comprehensive overview, the problem of dormant Swiss bank accounts and offering a solution requiring equitable binding resolution of claims).

33. Henry, *supra* note 14, at 17; see *Goodman v. Searle*, No. 96CV06459 (N.D. Ill. filed Oct. 3, 1996). The Goodman family sued to recover a Degas painting called "Landscape with Smokestack," from Daniel Searle, a Chicago businessman who bought the painting in 1987 for \$850,000. The family contended their grandfather was the rightful owner and he died in a concentration camp during World War II.

The *Goodman* case was settled on August 7, 1998. The compromise agreement calls for shared ownership of the painting, now valued at \$1.1 million dollars. Searle will donate his half of the painting to the Chicago Art Institute and the Goodman brothers will sell their share to a museum for half of the fair market value (approximately \$500,000). Marilyn Henry, *Holocaust Victims' Heirs Reach Compromise on Stolen Art*, JERUSALEM POST, Aug. 16, 1998, at 3 [hereinafter Henry, *Compromise*]; see also *Rosenberg v. Seattle Art Museum*, No. C98-1073 (W.D. Wash. filed July 31, 1998). The *Rosenberg* suit challenges the Seattle museum's ownership of a Matisse Painting called "Odalisque" which the Rosenberg heirs claim belongs to them.

34. The United States Holocaust Assets Commission Act of 1998 was concurrently introduced in both the House of Representatives as H.R. 3662, 105th Cong. (1998) by Jim Leach of Iowa and the Senate as S. Res. 1900, 105th Cong. (1998) (enacted) by Alphonse D'Amato of New York. Its purpose is to establish a commission to examine issues pertaining to the disposition of assets from the Holocaust era and to make recommendations to the President. The Senate passed the measure on May 1, 1998. See 144 CONG. REC. D443-01 at S4035 (May 1, 1998).

III. DERIVATION OF THE DISPUTED WORKS OF ART

When World War II erupted in 1939, Paris was the center of the art world.³⁵ When the liberation of Paris occurred in August 1944, France was culturally devastated.³⁶ Commentators suggest that nearly one-third of the art held in private hands had been pillaged by the Nazis.³⁷ Many of those tens of thousands of art works are missing to this day.³⁸ Interestingly, some of the fervor of Hitler's troops in pillaging French art was seen as retaliation for the theft of German art by Napoleon's troops, a sort of cultural repatriation project.³⁹ If the paintings did not fit the Nazi's taste for Old Masters, or were, as they called it, "degenerate"⁴⁰ modern art, they were quickly sold and the modern pieces bartered for more appropriate artworks.⁴¹

A. Kann's "*Smoke Over the Roofs*," by Fernand Leger⁴²

Alphonse Kann, born in 1870, an elegant man by all accounts, was both an art lover and connoisseur.⁴³ His art collection included more than twenty Picassos, numerous other paintings by Braques, Klees, Matisse, Masson, Manet, Renoir, Italian masters, and French eighteenth-century paintings.⁴⁴ The Kann home outside Paris was looted by a specially trained squad of Nazi soldiers in 1940, after Kann fled to London because the Germans had

35. FELICIANO, *supra* note 5, at 3.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 26. Hitler, through Martin Bormann and Goebbels, commissioned Otto Kummel, director of the Reich's museums, to compile a report of all German art held by foreign powers. *Id.* at 24. The Louvre itself catalogued works by making distinctions among the different sources. *Id.* at 26. Kummel could prove that the Napoleonic War yielded some very impressive art works to the Louvre, including those by Rembrandt, Durer, Rubens, and Tintoretto. *Id.* at 28.

40. Hitler, in *Mein Kampf*, had made known his distaste for modern art including Dadism, Cubism, Futurism, and he wrote that these modern works were "products of degenerate minds." *Id.* at 20 (citing ADOLPH HITLER, *MEIN KAMPF* (Boston Houghton Mifflin, 1971)).

41. *Id.* at 106, 110; see also *ABC Nightline*, *supra* note 7 (Brian Ross commenting).

42. The painting by Leger, by some experts' estimates, is said to be worth as much as two million dollars. *ABC Nightline*, *supra* note 7 (stated by Ted Koppel).

43. FELICIANO, *supra* note 5, at 110. Kann was said to have grown up on the Champs-Elysees with Marcel Proust, the French novelist, who remained a lifelong friend. *Id.* at 11.

44. *Id.*

overrun France.⁴⁵ Over one hundred paintings and drawings, as well as tapestries and manuscripts, disappeared from the Kann collection.⁴⁶

In November 1997, Francis Warin, a descendant of Kann who was living in Paris, wrote to the Minneapolis Institute of Art inquiring about the origins of the Leger painting.⁴⁷ The query prompted some background checks on the picture which had been bequeathed to the museum by a collector in 1961.⁴⁸ John Easley, the museum's director, while stating that he sympathized with Kann's family, added that he needed all of the facts before coming to a conclusion.⁴⁹ Kann's family states that Alfonse Kann filed a claim for the Leger painting with the French government, including a description of it, after World War II.⁵⁰

Interestingly, correspondence in the Minneapolis Museum's archives indicates that the Leger piece was purchased from Buchholz Gallery in New York in 1951.⁵¹ The gallery's namesake, Karl Buchholz, was one of four German art dealers who were charged with selling the "degenerate" modern art that was not earmarked for Hitler's private collection or his planned museum.⁵² Unfortunately, the Kann family is unable to provide pictures or other documentation to prove ownership of their Leger as clearly as that provided by the Rosenbergs for return of their family's Matisse.⁵³

45. *ABC Nightline*, *supra* note 7 (stated by Brian Ross).

46. FELICIANO, *supra* note 5, at 204. The Kann family is now issuing a series of legal claims to recover the looted collection.

47. Abbe, *supra* note 4, at 3B.

48. See FELICIANO, *supra* note 5, at 205. It is very difficult to follow the trail of many of the works of art because they were either laundered or held for years by unscrupulous dealers in Switzerland and elsewhere throughout Europe. *Id.*

49. *Id.*

50. *ABC Nightline*, *supra* note 7 (alleged by Francis Warin, Kann's relative).

51. See Abbe, *supra* note 2, at 1E.

52. See NICHOLAS, *supra* note 19, at 23-25. This book was the first to begin the exploration of the laundering and sale of art and the routes taken by the Nazis generating currency for the War effort. This author recounts that Karl Buchholz was one dealer entrusted with the task of selling unwanted or "degenerate" art, as were many other dealers. *Id.* at 24. The artworks were sold to the dealers cheaply from a warehouse outside Berlin. *Id.* at 23. The prices listed in this book, which were found in official documents recovered recently, include works by Paul Klee for \$300 to Buchholz, Gilles watercolors for \$.20 each, and Beckmann paintings for \$20. *Id.* at 25. Curt Valentin began the Buchholz Gallery in New York in the 1930s and was apparently able to buy art from the Nazis at very low prices, possibly with the help of Buchholz. *Id.* at 24.

53. See Abbe, *supra* note 2, at 1E.

B. Rosenberg's "Odalisque," by Matisse

Paul Rosenberg was one of the most important art dealers of nineteenth and twentieth century art in France.⁵⁴ When war broke out in Europe in 1939, Rosenberg was on vacation in Tours with his wife and children.⁵⁵ He hoped he would not have to flee the country, and he began systematically transferring his paintings to Tours, while continuing to run his art gallery.⁵⁶ As it became clear that the German invasion of Paris was imminent, the Rosenberg family crossed into Spain on June 17, 1940.⁵⁷ In Lisbon, the entire family was able to get visas, and, three months after fleeing Paris, they arrived in New York City.⁵⁸

The climate in Paris after the German invasion favored the unscrupulous informants and extortionists.⁵⁹ Parisian antique dealers told the Germans where the Rosenberg paintings were located in exchange for a ten percent commission to be paid to them when the paintings were finally sold.⁶⁰ The day after Paris was liberated, Paul Rosenberg began searching for his missing artworks.⁶¹ His family is still involved in the search to retrieve their missing art. The Rosenberg heirs have filed suit in federal court in Seattle to recover a Matisse painting, titled "Odalisque," given to the Seattle Art Museum in 1991.⁶² The family claims it is their stolen work, which came from a corrupt German art dealer and passed through the hands of an unsuspecting New York gallery.⁶³

54. FELICIANO, *supra* note 5, at 52-53.

55. *Id.*

56. *Id.* at 52.

57. *Id.* at 68.

58. *Id.* at 69.

59. *Id.* at 70.

60. *Id.* at 69-70. These informants of the Rosenberg collection were identified in the book as Yves Perdoux and a Count de Lestang. *Id.* at 73. Some paintings were taken from the art gallery on the Rue de La Boetie and others from the family home, Castel, in Floriac in the Loire valley of France. *Id.*

61. *Id.* at 171.

62. *See* Rosenberg v. Seattle Art Museum, No. C98-1073 (W.D. Wash. filed July 31, 1998).

63. Abbe, *supra* note 4, at 3B; *see also* Regina Hackett, *Seattle Museum Sued over Artwork: Dealer's Heirs Claim Matisse Painting Was Looted by Nazis*, SEATTLE POST-INTELLIGENCER, Aug. 1, 1998 at P1. This suit is likely the first suit filed against an art museum rather than an individual.

C. *The Cleveland Museum of Art: Durer Drawings*

This political struggle between Poland and the Ukraine is complicated and far-reaching. The Durer drawings, now held in storage by the Cleveland Museum of Art because they are light-sensitive, were originally owned by Prince Heinrich Lubomirski, a wealthy man who donated his collection to the Ossolinski Institute in Lviv, which at that time was known as the Austrian city of Lemberg.⁶⁴ The drawings were long forgotten until an art historian discovered them and published an article about them after the collapse of the Austro-Hungarian empire when Lemberg became Lviv, Poland.⁶⁵

In 1939, when Hitler invaded Poland and began World War II, the Germans found and took twenty-four Durers to Goring in Berlin.⁶⁶ When the Third Reich collapsed, the drawings were hidden in a salt mine near Salzburg.⁶⁷ They were recovered in January of 1948 and taken to the Munich Collecting Point of Monuments, Fine Arts and Archives section of the United States Military in Germany.⁶⁸ Georg Lubomirski, a descendant of Prince Heinrich, claimed the drawings.⁶⁹ The United States military gave them to Lubomirski rather than returning them to Poland, which was at the time in the Soviet bloc.⁷⁰ Accounts vary, but it is speculated that this may have been done with the promise that the drawings would be donated to the National Gallery in Washington.⁷¹ Rather, Lubomirski sold the drawings through a New York dealer and lived off the proceeds on the French Riviera until his death.⁷²

The director of the Cleveland Museum of Art has insisted that the history of these drawings is not new and was well publicized from the

64. See Litt, *supra* note 6, at 1A.

65. *Id.*

66. *Id.* The drawings were given to Hitler. It is reported that he took them with him on tours of the battle front so he could "see them more often." *Id.*

67. *Id.*

68. *Id.*

69. *Id.* The director of the Lviv Gallery said he can produce the will of Prince Heinrich Lubomirski which left the Durers to Lviv, Poland. *Id.* According to representatives at the Ossolinski Library, in Wroclaw, Ukraine, the library has a contract signed by the prince which deeds the collection to the Ossolinski Institute. *Id.* Both claims must be pressed by the governments for each of the countries. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

inception.⁷³ The claim resulting from the acquisition of these drawings will be complicated.

D. Goodman v. Searle: Family Wants the Court to Return Degas

Eugen Gutmann realized in the 1880s that it was impossible to be Jewish and do well in business.⁷⁴ So Eugen became a Protestant, founded the Bank of Dresden, and was catapulted into wealth.⁷⁵ Eugen's son, Friedrich, was raised Protestant and inherited his father's business.⁷⁶ After fighting in World War I, in which he survived being a prisoner of war, Friedrich moved to Holland, opened a branch of his father's bank, and began filling his expansive home with art.⁷⁷ Along with an enormous collection of Old Masters, Friedrich collected two Degas works and a Renoir.⁷⁸

Then the cataclysm. World War II erupted. Friedrich lost his bank, and his newly acquired Protestant religion was not enough to outweigh his Jewish blood.⁷⁹ Luckily his two children, Lili and Bernard were out of Holland in Italy and England.⁸⁰ In 1939, as the tide of anti-semitism swept the country, Friedrich sent several pieces of his art collection to Paris, including the "Landscape" by Degas.⁸¹

The Nazis appeared at the door of their home in 1943, and the Gutmanns were told by the Nazis that they were being sent to Italy on the train to be with their daughter, Lili.⁸² Lili, to whom this information was communicated, continued to meet trains day after day in Italy, not knowing her father was killed in the Theresienstadt concentration camp and her mother had been gassed in Auschwitz.⁸³

73. *Id.* Peter Bergman is the current director of the Cleveland Museum of Art, as well as on a panel for the American Association of Art Museum Directors charged with creating guidelines for investigating claims of stolen art. *Id.*

74. Teri Sforza, *A Family Wants the Return of A Degas Painting Believed Stolen by the Nazis*, ORANGE COUNTY REG., Mar. 24, 1998, at A10. Much of the Gutmann/Goodman story is told in this piece. Notice that Gutmann is the German surname which is the equivalent of the English surname, Goodman.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

After the war, the Gutmann children, Bernard and Lili, began a quest to recover what they could of the family-owned art collection.⁸⁴ They filed claims with Interpol, as well as with the French and German governments.⁸⁵ Bernard died in 1994, but the quest for the collection did not.

Nick Goodman, an art director in California, inherited an old desk from his father, Bernard.⁸⁶ When he looked inside that desk, he found documents about his father's search for art stolen from the family by the Nazis.⁸⁷ Among the art listed was a Degas titled, "Landscape With Smokestacks."⁸⁸ Goodman says his father "went to his grave thinking he failed."⁸⁹

Gutmann's sons, Nick and Simon, have picked up his fervor, and were shocked to find the Degas, "Landscape," adorning the walls of the Metropolitan Museum in Chicago listing Daniel Searle as the owner.⁹⁰ The family believes the painting was stolen by the Nazis.⁹¹ Searle defended his ownership of the painting and argued that the Goodman family should have pursued the Degas more diligently and that the Goodmans were negligent in their search.⁹²

A federal judge entertained and overruled a motion to dismiss the case in July 1998.⁹³ Only one month prior to the date set for trial, a compromise was reached in the case, on August 7, 1998.⁹⁴ The grandchildren will finally

84. *Id.*

85. *Id.*

86. See Peter Plagens & Andrew Nagorski, *The Spoils of War: Pictures Looted by Nazis Hang in Top Museums; A Drive to Get Them Back in the Artworld*, NEWSWEEK, Mar. 30, 1998, at 60 (containing a comprehensive view of some of the pending claims against American museums). Nick Goodman is the son of Bernard Gutmann and the grandson of Friedrich Gutmann.

87. *Id.*

88. *Id.*

89. *Id.*

90. Abbe, *supra* note 4, at 3B. The article suggests that the Goodman grandsons contacted Searle in 1995 with their detailed claim, which he rejected. *Id.* Since their claim was rejected by Searle, the Goodmans were forced to bring suit in 1996. *Id.*

91. *Id.* Some of the 30 Gutmann family-owned paintings that were seized by Reichsmarshal Hermann Goring have been traced to London. An organization called Trace, which runs a database of stolen artwork, estimates that at least five hundred of these stolen works were held in Britain in warehouses and private collections after having been bought cheaply from British art dealers who acquired them in Switzerland between 1933 and 1945. See Harlow, *supra* note 30, at 7.

92. Henry, *supra* note 14, at 17.

93. A docket search indicates that trial had tentatively been set for September 9, 1998. See Docket: Goodman v. Searle, No. 96CV06459 (N.D. Ill. filed Oct. 3, 1996), available in WESTLAW, CourtLink Dockets Library, U.S. District Courts File (July 18, 1998).

94. Henry, *Compromise*, *supra* note 33, at 3. The settlement reached by the parties was

have their wish; their grandparents' names will hang in their rightful place on the plaque next to the Degas on the museum wall.⁹⁵ The following sections of this Article will present the various theories aggrieved plaintiffs may use to recover stolen artwork, and the remedies available to such plaintiffs in the United States.

IV. LEGAL THEORIES OF RECOVERY

There are more valid facts and details in works of art than there are in history books.

*Charlie Chaplin*⁹⁶

Problems finding the true owner of works of art most notably will arise in proving true ownership of the work in question.⁹⁷ Over five decades have passed since the end of World War II. Thorough research into the artwork's history requires cross-checking records often written in German as confiscation lists and records.⁹⁸ Rarely, families photographed their collections.⁹⁹ Heroes arose in the French national museums who preserved art and after the War aided in returning thousands of works of art to the rightful owners.¹⁰⁰ But often, the French documents were "jealously guarded" and were, until recently, "inaccessible to the public."¹⁰¹ Thus, the search now requires investigating art history by looking into French records, the United States National Archives, and British reports.¹⁰² The task is

identical to the agreement initially proposed by the Goodman family, who wanted the painting hanging in the museum with the name of their family beside it. The Goodman family will receive half of the appraised value of the work, now valued at \$1.1 million dollars, from the museum. Searle will donate his one-half interest in the work to the museum. The painting has been on exhibition since October 9, 1998. The plaque beside it will now read, "purchase from the collection of Freidrich and Louise Gutmann and a gift of Daniel C. Searle." Kevin M. Williams, *Deal Here Ends Degas Dispute*, CHI. SUN-TIMES, Aug. 14, 1998, at 2.

95. *Id.*

96. BARTLETT, *supra* note 1, at 812.

97. Abbe, *supra* note 2, at 1E.

98. *Id.* The Third Reich's art historians put together for the Furer a photograph album of some of the confiscated works and each one was inventoried and catalogued. *Id.*

99. FELICIANO, *supra* note 5, at 8. The quality of the photographs was not very good, because most were shot before 1938 before the Nazis marched into Paris. *Id.*

100. *Id.* at 238. Tens of thousands of works of art are still missing and others which have been found have no known owners. *Id.* at 4.

101. See Abbe, *supra* note 4, at 3B (citing generally FELICIANO, *supra* note 5).

102. FELICIANO, *supra* note 5, at 7.

daunting, since unclear claims brought against institutions can cause great embarrassment to them.¹⁰³ Equitable ways of adjudicating claims will require patience as well as knowledge and professionalism.

In the United States, there are primarily three ways of dealing with claims of stolen works of art. The common law doctrine of replevin is the first remedy. The second is the National Stolen Properties Act.¹⁰⁴ The third method of dealing with such claims is the Convention on Cultural Property Implementation Act.¹⁰⁵ Each of these methods of dealing with claims of artwork stolen long ago is inadequate.

V. REPLEVIN

A. *Replevin by Individuals of Personally Owned Artworks*

Replevin is an action in which the original owner of goods is entitled to recover them from one who has wrongfully taken or retained them.¹⁰⁶ Replevin is a common law remedy and is based upon the traditional rule that a thief may never pass better title to goods than he himself possessed.¹⁰⁷ In addition, this doctrine has been codified in the Uniform Commercial Code.¹⁰⁸ Since a thief never acquires good title to stolen property, a subsequent purchaser, no matter how innocent, cannot challenge the title of the original owner.¹⁰⁹ The doctrine of replevin is limited by a duty on the prior owner to exercise due diligence in attempting to locate the stolen property.¹¹⁰ A claim cannot arise against a good-faith purchaser until a

103. Abbe, *supra* note 2, at 1E. This article tells the story of a professor who, in the 1980s, charged that the New York Metropolitan Museum of Art had a Chardin painting of a boy blowing bubbles that was stolen from a family by the Nazis. In fact, the Chardin painting was returned to the family after World War II, and the family then sold it to the Metropolitan Museum via a private gallery.

104. 18 U.S.C. §§ 2314-2315 (1994).

105. 19 U.S.C. §§ 2601-2613 (1994).

106. BLACK'S LAW DICTIONARY 675 (5th ed. 1983).

107. Brian Bengs, *Dead on Arrival? A Comparison of the Unidroit Convention of Stolen or Illegally Exported Cultural Objects and U.S. Property Law*, 6 TRANSNAT'L & CONTEMP. PROBS. 503, 518 (1996).

108. See U.C.C. §§ 2-401 to -403 (1992).

109. Bengs, *supra* note 107, at 518. There is some support for the proposition that Italian law may confer title of stolen works to a good faith purchaser for value. See Harlan Levy & Constance Lowenthal, *Stolen and Smuggled Art*, N.Y. L.J., Dec. 9, 1997, at 1 (citing *Winkworth v. Christie, Manson & Woods, Ltd.*, Ch. 497 (Eng. L.R.-Ch. 1980)).

110. See *DeWeerth v. Baldinger*, 836 F.2d 103 (2d Cir. 1987). New York law governed this dispute regarding the ownership claim by Dorothea DeWeerth of a Monet,

demand is made for the return of the property and the demand is subsequently refused.¹¹¹

One of the earliest cases in the United States illustrating the use of replevin for the return of artwork stolen by the Nazis in World War II is *Menzel v. List*.¹¹² Plaintiff, Erna Menzel, sought to recover a painting by Marc Chagall which she and her husband were forced to leave in their Brussels, Belgium apartment in March 1941 as the Nazis overran Europe.¹¹³ The Menzels' complaint alleged that they bought the painting in 1932 from a gallery in Brussels for the equivalent of \$150.¹¹⁴ The Nazis seized the Chagall and left a receipt indicating it was taken into "safekeeping."¹¹⁵ The Menzels' search for the painting began with the end of World War II and continued without success until 1962, when the Chagall was discovered in the possession of Albert List.¹¹⁶

List maintained he was a bona fide purchaser for value who bought the painting in good faith from the Perls Gallery in New York City.¹¹⁷ List also invoked the statute of limitations as a defense and even argued that the Chagall painting was not the same one as the one Ms. Menzel had owned.¹¹⁸ The New York Gallery owner who sold the painting to List testified that he bought the painting from the Galerie Moderne in Paris.¹¹⁹

The jury entered a verdict for Ms. Menzel valuing the painting at \$22,500 and agreed that List could recover the value of the painting from the Perls Gallery upon delivery of the painting to Ms. Menzel.¹²⁰ Relying on

owned by her from 1922 until 1943, which disappeared during World War II and was subsequently purchased in 1957 by Edith Baldinger. *Id.* at 104. The court held the case was governed by the "due diligence" requirement because the evidence indicated that DeWeerth did not make any efforts to find the painting after 1957. *Id.* at 112. The court indicated that, had she done so, the painting would have been found in Baldinger's possession with minimal investigation. *Id.*

111. *Id.* at 108. This principle is consistent with the favorable treatment of the good-faith purchaser by the common law. *Id.* The purpose is the protection of the innocent purchaser from a defect in his title so he may have the opportunity to deliver the property to the true owner before he is held liable in tort. *Id.*

112. 267 N.Y.S.2d 804, 806 (Sup. Ct. 1966).

113. *Id.* The painting was called "Le Paysan a L'echelle" [The Peasant and the Ladder]. *Id.* at 807. It was considered "decadent" art by the Nazis because it was modern.

114. *Id.* at 807-08.

115. *Id.* at 806.

116. *Id.* at 807.

117. *Id.*

118. *Id.* at 807-08.

119. *Id.* at 808.

120. *Id.*

New York law, the *Menzel* court ruled that a statute of limitations defense based on the lapse of time from 1941 to 1955 was inapplicable.¹²¹ The court stated that in replevin actions, as well as conversion, "the cause of action . . . arises, not upon the stealing or the taking, but upon the defendant's refusal to convey the chattel upon demand."¹²²

The *Menzel* court also addressed the issue of whether, under international law, the seizure of this painting by the Nazis violated the Hague Conventions of 1899 and 1907.¹²³ The language of the Hague Conventions provides that "[a]ll premeditated seizure . . . destruction or damage of . . . works of art . . . is forbidden."¹²⁴ Again, under the Conventions, the court held that no title could have been conveyed as against the rightful owners.¹²⁵

B. Replevin by a Foreign Nation

One of the most widely read cases illustrating the use of replevin by a foreign nation for the return of stolen property is *Autocephalous Greek-Orthodox Church of Cyprus v. Goldman & Feldman Fine Arts, Inc.*¹²⁶ The

121. *Id.* at 809.

122. *Id.* (citing with approval *Cohen v. M. Keizer, Inc.*, 285 N.Y.S. 488 (App. Div. 1936), and setting out the elements of replevin).

123. *Id.* at 816; see also Mastroberardino, *supra* note 27, at 346. Defendants also utilized the act of state doctrine as a defense. *Menzel*, 267 N.Y.S.2d at 816. This doctrine excepts from recovery all property held after the "official acts of another state." See *Bernstein v. Van Heyghen Freres Societe Anonyme*, 163 F.2d 246, 249-50 (2d Cir. 1947). The *Menzel* court refused to hold the pillaging of Europe by the Nazis as a lawful act. 267 N.Y.S.2d at 816. Conversely, in *Stroganoff-Scherbatoff v. Weldon*, 420 F. Supp. 18 (S.D.N.Y. 1976), the act of state doctrine was found to apply when the Soviet government, which nationalized all movable property of citizens who fled the Soviet Union, confiscated works of art belonging to the Stroganoffs in the 1920s and later sold them at auction in Berlin. *Id.* at 22.

124. *Menzel*, 267 N.Y.S.2d at 817 (citing Article 56 of the Simultaneous Convention Respecting the Law and Customs of War on Land, 36 Stat. at L. 2309; 6 F.R.D. 69, 120).

125. *Id.* at 820. "Where pillage has taken place, the title of the original owner is not extinguished." *Id.* at 812 (citing *Mazzoni v. Finanze dello Stato*, LII II Foro Italiano 960 (Tribunale di Venezia, 1927), as translated and digested in *Annual Digest of Public International Law Cases, 1927-1928* (London, 1931), at 564-65); see also Mastroberardino, *supra* note 27, at 346.

126. 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990). The suit was a landmark decision in efforts to stem the illegal trade in international antiquities and stolen art. Experts indicate that dealings in stolen art provide a billion-dollar black market which is second only to the profits of traffickers in illegal drugs. See Steve Mannheimer, *Litigators of the Lost Art: Court Orders Return of Byzantine Mosaics to Their Homeland*, SATURDAY EVENING POST, Oct. 1989, at 62-63.

defenses employed by the defendant in this replevin case were similar to those used by the defendant in *Menzel*. Those addressed by the court include the statute of limitations, due diligence on the part of the original owner, and the legal doctrine of *lex situs*.¹²⁷

At issue in this case were four Byzantine mosaics made of small chips of colored glass which were originally affixed to and inside the ceiling of the church of the Panagia Kanakaria in Lythrankomi, Cyprus.¹²⁸ These religious objects were central to the Greek Orthodox faith and were crafted in the sixth century A.D.¹²⁹ They had weathered many invading armies.¹³⁰ In 1974, Turkish military forces invaded Cyprus and forced the Greek population to leave.¹³¹ Five years later, in 1979, the Nicosea Department of Antiquities received reports from tourists that the mosaics had been chiseled from the ceiling of the Church.¹³² The mosaics did not surface until June of 1988.¹³³

Peg Goldberg flew to Amsterdam to purchase a Modigliani painting, and, instead, she was introduced to the mosaics.¹³⁴ The dealer indicated that the owner, a former archaeologist for the Turkish Republic, was deathly ill and willing to part with the Mosaics for a fraction of their worth.¹³⁵ Peg Goldberg took possession of the stolen mosaics in a Swiss airport and then took them to Indiana.¹³⁶ Unlike the litigation facing other artworks claimed by private individuals, there was no question about the original location and ownership of these mosaics.

Applying Indiana law, the *Autocephalous* court first addressed Goldberg's claim that the statute of limitations for a replevin action had

127. *Id.*; see also Bengs, *supra* note 107, at 518.

128. Bengs, *supra* note 107, at 518; see also Mannheimer, *supra* note 126, at 63.

129. Mannheimer, *supra* note 126, at 63. The objects were purported to be 1450 years old and worth over twenty million dollars. *Id.* According to the author, the Getty Museum in Los Angeles notified the Greek church when Goldberg offered it to them for twenty million dollars. *Id.*

130. *Id.* at 65. The author indicates that these mosaics withstood 12 centuries of invasions including the Byzantine Empire, Arabs, crusaders, as well as the Venetian, Turkish, and British armies. *Id.*

131. *Id.* The article pointed out that the Church was in northern Cyprus, which was occupied by the Turks since 1974 and that the Greek Cypriots regard the territory as theirs. *Id.* Thus, the suit for the artifacts carried with it religious fervor as well as territorial battles. *Id.*

132. *Id.*

133. *Id.* at 66.

134. *Id.*

135. *Id.* Indeed, the dealers Fitzgerald and Van Rijn charged Goldman \$1,080,000 yet paid only \$350,000 for the mosaics, pocketing the rest. *Id.*

136. See Bengs, *supra* note 107, at 518.

expired.¹³⁷ Indiana requires due diligence on the part of the original owner, but recognizes the discovery rule which posits that the statute of limitations does not begin to run until the original owner is on reasonable notice of the identity of the possessor.¹³⁸ Therefore, because the plaintiffs did not receive notice that the mosaics were in Goldberg's possession until 1988, the court held that their suit, brought in 1989, was within one year of discovery.¹³⁹ Accordingly, plaintiffs were not barred by Indiana's six year statute of limitations for replevin actions.¹⁴⁰

In its choice of law analysis, the court recognized that, under the doctrine of *lex situs*, it must apply the law of the nation to which possession and control of the property had been transferred.¹⁴¹ This would have necessitated the application of Swiss law, because the mosaics were purchased in Switzerland. However, Swiss law also recognized an exception for property which had been present in only a transitory manner. In these cases, the exception provided that the law of the place of final destination of the property applied.¹⁴²

Replevin is the most applicable common law doctrine for use regarding artwork stolen by the Nazis which is subsequently found in United States museums. The doctrine assumes the property owner is aware of what he owns and knows when it is missing.¹⁴³ Replevin should be statutorily

137. *Autocephalous*, 717 F. Supp. at 1386.

138. *Id.* Commentators recognize that due diligence is the most difficult test for a prior owner to meet for previously undiscovered property because, even when ownership is unquestioned, the awareness of the existence of the property in another's hands is very difficult to pinpoint. *See* Bengs, *supra* note 107, at 519.

139. *Autocephalous*, 717 F. Supp. at 1391.

140. *Id.* The Indiana court also held that the doctrine of fraudulent concealment prevented the tolling of the limitation period. In this case, the court found the mosaics were purposefully hidden from the true owners, thus preventing the statute of limitations from tolling. *Id.* at 1392-93.

141. *Id.* at 1395.

142. *Id.* Professor von Mehren, a Harvard Professor of Law and an expert witness on Swiss law for the plaintiffs, testified at trial to the Swiss law requirements. *Id.*

143. *See* DeWeerth v. Baldinger, 836 F.2d 103, 108 (2d Cir. 1987) (holding that a good faith purchaser should be protected against a defect in title by the due diligence of the owner in timely pursuing his demand); *see also* Kunstsammlungen Zu Weimar v. Elicofon, 536 F. Supp. 829, 848-49 (E.D.N.Y. 1981), *aff'd*, 678 F.2d 1150, 1161 (2d Cir. 1982). Plaintiffs, a German museum and private owner, sought the return of two priceless Albrecht Durer Paintings that disappeared from a German castle in 1945. *Id.* at 830. Defendant, Mr. Elicofon, apparently purchased them from an American serviceman after World War II and hung them in his Brooklyn apartment openly for over 20 years. *Id.* at 833. He was unaware of the artist and value until 1966, when a visitor to his home recognized them as stolen because

modified in these situations, where works of art surface in American museums, to counteract the harsh effects of the due diligence requirement.¹⁴⁴ Due diligence cannot be expected on the part of families decimated by the tyranny of World War II and the Nazi juggernaut. Thus, the doctrine should be modified to exclude the due diligence requirement in cases where families lay claim to once owned artwork of their dead relatives. It is a sufficient burden for these families and individuals to show that, by a preponderance of the evidence, they were the true owners of the artwork. Thus, the due diligence requirement should be abandoned in these Holocaust assets claims.¹⁴⁵

VI. NATIONAL STOLEN PROPERTY ACT

The National Stolen Property Act¹⁴⁶ ("the Act") was enacted to curb the theft of cultural property.¹⁴⁷ Unlike the common law doctrine of replevin,

they had been publicized in an art publication. *Id.* The efforts of the Federal Republic of Germany to find them were widespread, and the federal court found the efforts entirely reasonable. *Id.* at 852. The court dismissed the private party's claim, but awarded the drawings to the Weimer Art Collection, Kunstsammlungen Zu Weimar, of the German Democratic Republic. *Id.* at 831.

144. See generally Sydney M. Drum, Comment, *DeWeerth v. Baldinger: Making New York a Haven for Stolen Art?*, 64 N.Y.U. L. REV. 909 (1989). The author asserts that the special circumstances of stolen artwork present unusual, if not Herculean, obstacles to the original owners. *Id.* at 937. Moreover, she rejected the Second Circuit court decision in *DeWeerth*, which held that due diligence was not exercised, because DeWeerth had mounted an extensive investigation to find her lost painting. *Id.* at 939-44.

145. See Martin Rosenberg, *Papers Show Nazis Misuse of Treasures: Truman Library Opens Postwar Papers on Stolen Riches*, KANSAS CITY STAR, May 15, 1998, at C3. The documents of Bernard Bernstein, who was assigned by Gen. Dwight D. Eisenhower to identify the stolen economic loot of the Nazis, were opened to researchers at the Truman Library in Kansas City. *Id.* Bernstein died in 1990. *Id.* The report fills 28 boxes and is expected to provide a wealth of information for researchers in the art and banking arenas. *Id.*

146. 18 U.S.C. § 2314 (1994). The statute provides in relevant part:
[w]hoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud . . . [s]hall be fined [not more than \$10,000] or imprisoned not more than ten years, or both.
Id. The original language of the Act was changed to replace the words "under this title" with "not more than \$10,000" by an amendment in 1994. Act of Sept. 13, 1994, Pub. L. No. 103-322, 108 Stat. 2147.

147. The United States Code prohibits the importation of an object which is known to be "stolen" at the time of import. 18 U.S.C. § 2314. Under § 2314, an object is considered "stolen" if a foreign nation has assumed ownership of the object through its artistic and

the Act carries criminal penalties.¹⁴⁸ This threat of criminal prosecution presents a problem for individuals attempting to retrieve stolen artwork because there is no provision for the return of stolen property to the former owner.¹⁴⁹ Specifically, the legislative purpose of the Act is to prosecute "fences" of stolen property because the fencing of stolen goods was seen as a major challenge to the nation, as was the growing problem of organized crime.¹⁵⁰ To convict under this statute it is necessary that the government prove three critical elements: first, that the property was stolen; second, that the property was transported in foreign or interstate commerce; and third, that the property was valued at over \$5000.¹⁵¹

The Act places the evidentiary burden upon governments or individuals by requiring them to document property ownership and derivation, even as to the time of excavation or illegal import.¹⁵² This creates such a gargantuan burden of proof as to render this Act ineffective in its application.¹⁵³ The line of cases litigated under this Act have dealt with the Act's application to dealings in pre-Columbian artifacts, at first broadening the law and then narrowing it.¹⁵⁴

The decade of the 1970s brought the first attempts at applying the Act to pre-Columbian art. In the first case applying the Act to pre-Columbian artifacts, the Ninth Circuit held, in *United States v. Hollinshead*,¹⁵⁵ that a

cultural patrimony laws. See *United States v. McClain*, 593 F.2d 658, 664-65 (5th Cir. 1979); *United States v. Hollinshead*, 495 F.2d 1154 (9th Cir. 1974).

148. See 18 U.S.C. §§ 2314-2315. Because the Act is criminal in nature, it has no provisions for the return of the stolen property, nor for compensation to the original owner.

149. *Id.*

150. A "fence," as defined by Congress, is a "professional receiver of and dealer in stolen, embezzled, or fraudulently obtained merchandise." H.R. REP. NO. 2528, 70th Cong., Sess. 2 (1929), at 2.

151. See 18 U.S.C. § 2314; see also Bengs, *supra* note 107, at 520 (citing Leo J. Harris, *From the Collector's Perspective: The Legality of Importing Pre-Columbian Art and Artifacts*, in *THE ETHICS OF COLLECTING CULTURAL PROPERTY* 155, 161 (Phyllis Mauch Messenger ed., 1989)).

152. 18 U.S.C. § 2314.

153. See Bengs, *supra* note 107, at 522. The author points out the severity of the mandated proof required, stating:

[f]irst, the existence of national ownership legislation does not prove that a specific object came from that nation. Second, if a foreign government is able to show an object is from its territory, it must then prove that the object was taken after the law conferring ownership in the national government came into effect.

Id. (citing *Government of Peru v. Johnson*, 720 F. Supp. 810, 812 (C.D. Cal. 1989)).

154. *Id.* at 520-23.

155. 495 F.2d 1154 (9th Cir. 1974).

California dealer in pre-Columbian artifacts was guilty of illegally transporting into the United States a catalogued Guatemalan stele¹⁵⁶ that definitively belonged to Mexico.¹⁵⁷ Following *Hollinshead*, the Fifth Circuit expanded the holding in *United States v. McClain*,¹⁵⁸ to find the defendant criminally liable for the theft of a variety of pre-Columbian artifacts which were exported into the United States, even though the Mexican government never demonstrated it had actual physical possession of the artwork.¹⁵⁹ The most important aspect of *McClain* was that the court upheld the Mexican government's challenge based on the existence of a 1972 Mexican law which unequivocally claimed government ownership of all cultural property found within Mexico's boundaries.¹⁶⁰

Peru was not so fortunate in its attempt to recover treasures. In a 1989 decision, *Government of Peru v. Johnson*,¹⁶¹ a federal district court held that eighty-nine pre-Columbian artifacts purchased by Benjamin Johnson over several years would not be returned to Peru.¹⁶² The court found it significant that Peru, at the time of the trial, had no domestic law claiming national ownership of its artworks.¹⁶³ The tightening of the decision in *Johnson* may indicate that the United States refuses to be the legal enforcement arm for countries that are unwilling or unable to protect their artworks by enacting and enforcing laws within their own borders.¹⁶⁴

The use of the Act is not reasonable for individuals and families attempting to retrieve stolen artworks because the Act has criminal penalties and has no provision for return of the objects to the original owner or for monetary compensation for victims of the loss.¹⁶⁵

156. This artwork was known as "Machaquila Stele 2." A stele is defined as "[a]n upright stone or slab with an inscribed or sculptured surface, used as a monument or as a commemorative tablet in the face of a building." AMERICAN HERITAGE DICTIONARY 1193 (2d ed. 1985).

157. 495 F.2d at 1155-56.

158. 593 F.2d 658 (5th Cir. 1979).

159. *Id.* at 664; see Bengs, *supra* note 107, at 521-22.

160. *McClain*, 593 F.2d at 665-66.

161. 720 F. Supp. 810 (C.D. Cal. 1989).

162. *Id.* at 815.

163. For five months, between January 5, 1985, and June 21, 1985, a law was decreed by the President of Peru, which proclaimed that persons finding pre-Columbian objects could own them personally. *Id.* at 814. It appears that on June 22, 1985 a new Peruvian statute provided specifically that all archaeological artifacts belong to the state. *Id.* No one could know specifically when the Johnson artifacts were excavated. *Id.*

164. See Bengs, *supra* note 107, at 523.

165. Each individual state may also have its own laws, criminal and civil, which deal with the theft of property, its return, as well as the duty of due diligence and statutes of

VII. UNESCO AND UNIDROIT

In 1983, the United States ratified the Convention on Cultural Property Implementation which was first adopted by the United Nations Educational, Scientific, and Cultural Organization in 1970.¹⁶⁶ Its purpose is to protect the "cultural patrimony" of countries "from the pillage of archaeological or ethnological materials" by providing for import restrictions for art objects.¹⁶⁷ Because, by 1995, many countries had not ratified UNESCO, the International Institute for the Unification of Private Law in Rome prepared a new treaty called Unidroit which provides protection to the remaining art world.¹⁶⁸

The concern of the Unidroit Convention is the return of stolen cultural objects.¹⁶⁹ The law requires the involved nation bringing a claim to have an express law making it illegal to excavate or, in the alternative, legal to excavate but illegal to keep the objects found.¹⁷⁰ The most fascinating aspect of the burden of proof under this law is the fact that the current possessor of the cultural object is presumed not to have any legal right to it.¹⁷¹ Unlike United States law, which presumes innocence, the Unidroit Convention places the burden of proof upon the current owner of the disputed art object, even if the possessor acquired the object in good faith.¹⁷²

While the Unidroit Convention uses the discovery rule, it does not require a former owner to use "due diligence" to find the lost article as required by the doctrine of *replevin*.¹⁷³ For "public collections" there is no

limitations. This Article will not detail those competing standards in an effort to find a national consensus and universal solution.

166. See, e.g., United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231 [hereinafter UNESCO 1970 Convention]; Unidroit Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995, 34 I.L.M. 1322, 1330 [hereinafter Unidroit Convention].

167. See 19 U.S.C. § 2602 (1994); see also Sivan Baron et al., *Intellectual Property*, 34 AM. CRIM. L. REV. 741, 762 (1997).

168. Unidroit Convention, *supra* note 166, at 1322-32. The final name is Unidroit Convention on Stolen or Illegally Exported Cultural Objects. *Id.* at 1330.

169. *Id.*

170. *Id.*

171. Bengs, *supra* note 107, at 528.

172. *Id.*

173. *Id.*

time limit to prevail under the Unidroit Convention.¹⁷⁴ However, there is a fifty-year absolute time limit for individuals to bring a claim.¹⁷⁵ This precludes all claims of individual families from World War II since the War ended over fifty years ago.¹⁷⁶ Under this rule, however, the good-faith purchaser can be compensated for the loss, while under the doctrine of *replevin*, no economic protection exists for a good-faith purchaser.¹⁷⁷

The Unidroit Convention requires museums that receive cultural property to reasonably examine the background of any donations before accepting them. This requirement does not significantly differ from the common law rule required of the good-faith purchaser. So, while museums have the requirement of a reasonable investigation into the background of pieces they acquire, individuals whose family works were stolen during World War II may not utilize this law to retrieve their stolen artwork because the fifty-year limitation for individual claims has now expired.¹⁷⁸

VIII. THE HOLOCAUST ASSETS COMMISSION ACT

A. Legislative History

The testimony before the Congress on the morning of February 12, 1998, was riveting. The House of Representatives Banking and Financial Services Committee devoted the entire morning to testimony regarding restitution issues related to artwork taken during the Holocaust.¹⁷⁹ Experts recognized that while the preponderance of art taken by the Nazis remains in

174. *Id.* at 531. A "public collection" is defined as every possible owner of cultural property except an individual owner. See Unidroit Convention, *supra* note 166, at 1332.

175. Bengs, *supra* note 107, at 530. Although there is a blanket 50-year statute of limitations on individual claims, there is an exception for cultural objects belonging to a public collection. *Id.* at 531. The Unidroit Convention states "a cultural object forming an integral part of an identified monument or archaeological site, or belonging to a public collection, shall not be subject to time limitations." *Id.* (citation omitted). This ensures museums that their claims to collections will never be extinguished. Unidroit Convention, *supra* note 166, at 1331; see also Bengs, *supra* note 107, at 530-32.

176. Bengs, *supra* note 107, at 530-32.

177. For example, if the original owner of a painting did not seek its recovery, future purchasers would be unable to determine if the title was good. If future purchasers bought the painting in good faith, they could be compensated for their loss when the original owner was found, and the painting was reclaimed. See *id.* at 530 n.200.

178. See *supra* note 175 and accompanying text.

179. *World War II-Era Looted Artworks and Insurance Policies: Hearings Before the House Banking and Financial Services Committee*, 105th Cong. (1998) (opening statement of Rep. James A. Leach, Chairman) [hereinafter *Hearings*].

Europe, some, if not many, items have made their way into the United States.¹⁸⁰ The moral and legal issues arising from looted art were addressed in testimony by the heads of distinguished art museums,¹⁸¹ a representative of art dealers,¹⁸² and groups involved with Holocaust restitution.¹⁸³ The museum directors pledged to research the ownership history of their holdings and vowed never to exhibit stolen works.¹⁸⁴

Nonetheless, the testimony revealed the enormity of the problem of tracing the ownership history of stolen artworks through various continents, persons, and languages.¹⁸⁵ Also addressed was the fact that current art owners may be several steps removed from the looters, and, accordingly, many of the owners are good-faith purchasers.¹⁸⁶ Additionally, many public and private institutions are unaware of the art's dubious past and, thus, are good-faith purchasers as well.¹⁸⁷

Clear and resounding throughout the discourse was the undaunted desire of all parties for justice for an aging population of Holocaust survivors who are entitled to their art treasures.¹⁸⁸ Discussion in this hearing advocated that the survivors should not bear the costs of lawsuits and other legal

180. *Id.*

181. *Id.* (testimony of Philippe [Felip] De Montebello, Director, Metropolitan Museum of Art, Washington; James N. Wood, Director and President, Art Institute of Chicago; Earl A. Powell III, Director, National Gallery of Art; Glenn Lowry, Director, Museum of Modern Art, New York City).

182. *Id.* (testimony of Gilbert S. Edelson, Administrative Vice President and Counsel, Art Dealers Association of America).

183. *Id.* (testimony of Ronald S. Lauder, Chairman, Commission for Art Recovery, World Jewish Congress (citing FELICIANO, *supra* note 5; NICHOLAS, *supra* note 19; testimony of Ori Z. Soltes, Director B'nai B'rith Klutznick National Jewish Museum and Chairman of the Museum's Holocaust Art Restitution Project)).

184. *See id.*

185. *Id.* (testimony of Ronald S. Lauder, Chairman Commission for Art Recovery, World Jewish Congress). Mr. Lauder stated as follows:

I ask this Committee, in approaching the issue of the restitution of art, to appreciate the many ways in which works of [art] differ from other assets. Art moves in ways that are often very difficult to trace. It is bought and sold privately at least as often as it passes through public sales. When it is inherited and given within families, it may not surface for several generations. Art travels easily across borders. In countries where citizens are taxed on assets instead of income, art collectors are intensely secretive.

Id.

186. *Id.*

187. *Id.*

188. 144 CONG. REC. E597-01 (daily ed. Apr. 21, 1998) (statement of Rep. Lantos in support of the Act).

obstacles to have their art returned.¹⁸⁹ To that end, mediation and alternative mechanisms for the return of looted art were encouraged with the added recommendation for the creation of databases or central registries which would track and collate information in light of the recent release of so many previously unavailable World War II documents tracing artwork in foreign countries.¹⁹⁰

B. The Holocaust Assets Commission Act

In response to the compelling testimony of erudite and impassioned witnesses who claimed that art assets are now housed in the United States and Europe, the U.S. Holocaust Assets Commission Act of 1998 was unanimously enacted by the Senate on May 1, 1998.¹⁹¹ This bi-partisan legislation creates a Commission on Holocaust Assets with the authority and expertise to evaluate and examine the claims of survivors and their heirs to art objects located here in the United States.¹⁹²

189. See *Hearings*, *supra* note 179 (testimony of Stephen E. Weil; Ronald S. Lauder).

190. *Id.* Ori Z. Soltes, Director B'nai B'rith Klutznick National Museum, testified in September 1997 regarding the establishment of the Holocaust Art Restitution Project, which contained the four-fold purpose described as follows:

[T]o record and document all Jewish cultural losses at the hands of the Nazi government and its collaborators between 1933 and 1945; to computerize these data into a rugged state-of-the-art database which will be on-line and available for anyone to consult its contents; to produce exhibits pertaining to spoliated collections and their collectors; and to publish accompanying monographs focused on Jewish collections their developments prior to and their dispersal during and after the Second World War.

Id.

191. See Holocaust Assets Commission Act of 1998, Pub. L. No. 105-186, 112 Stat. 611 (codified as amended at 22 U.S.C. § 1621 (1998)).

192. See 144 CONG. REC. S2968-01 (daily ed. Apr. 1, 1998) (statement of Sen. D'Amato). The comments of Senator D'Amato, sponsor of the bill, urged the United States to establish such a commission and follow the lead of 12 nations that had already done so. *Id.* The inquiry of this Commission will take into account the following purpose and claims, as Senator D'Amato stated in the record:

If we are to provide long overdue justice to Holocaust survivors and the heirs of the victims, we must do so as expeditiously as possible. Time is of the essence if we are going to provide the necessary restitution to this already aged and rapidly dwindling survivor community. Moreover, by creating this commission we establish even greater moral authority and diplomatic credibility with other nations from which we seek answers on these important questions. Thus far, twelve nations have already set up national commissions to look into these issues.

This Commission will consist of twenty-one members, composed of House and Senate members, as well as eight private citizens appointed by the President.¹⁹³ The criteria for membership on the Commission indicates that private sector individuals must possess demonstrated leadership either on issues relating to the Holocaust or "in the fields of commerce, culture, or education that would assist the Commission in analyzing the disposition of the assets of Holocaust survivors."¹⁹⁴ The budget for the Commission and its activities has been set at \$3,500,000.¹⁹⁵

This Commission has broad power to investigate claims by holding hearings, accepting information from federal departments or agencies, examining research done by private individuals or entities, and locating documents found in domestic or foreign governments, in order to find any Holocaust-era assets arriving in the United States after January 30, 1933.¹⁹⁶ The Commission is charged with reporting its findings to the President not later than December 31, 1999.¹⁹⁷

As the walls which have prevented the disclosure of these Holocaust era assets crumble, the Commission should now have documents available to it, both foreign and domestic, that were previously closed to the world and

With this legislation we will create a commission that will seek to find the disposition of the following assets in this country: dormant bank accounts of Holocaust victims in U.S. banks; brokerage accounts; securities & bonds; artwork & religious/cultural artifacts; German looted gold shipped to the U.S. through the Tripartite Gold Commission; and insurance policies.

Id. at S2978. In addition, Senator Moseley-Braun stated:

It will not be possible to track down every asset, but complete success is not required. What is required is that everyone who had a role in this tragedy does their best to right the wrongs that have been committed, and that they understand that much more than money is at stake.

Id.

193. 22 U.S.C. § 1621 provides as follows:

[Along] with the eight private citizens serving on the Commission [there] will be four representatives composed of one from each; the Department of State, the Department of Justice, the Department of the Army and the Department of the Treasury; four members of the House of Representatives (two appointed by the Speaker of the House and two appointed by the minority leader); four members of the Senate (two appointed by the Senate majority leader and two appointed by the Senate minority leader); and one Chairperson of the United States Holocaust Memorial Council.

22 U.S.C. § 1621 (1998).

194. 144 CONG. REC. S4129-30 (daily ed. May 1, 1998) (statement of Sen. Kyl).

195. Holocaust Assets Commission Act of 1998 § 9, 22 U.S.C. § 1621 (1998).

196. See generally Holocaust Assets Commission Act of 1998 § 3, 22 U.S.C. § 1621 (1998).

197. *Id.*

which will expedite the judicious return of objects to the survivors of the Holocaust and their heirs.¹⁹⁸ With nearly unlimited monetary and cultural resources at its disposal, the Commission has a formidable task. It does, nevertheless, possess the power to advise the President and force legislation if necessary to implement the expedient return of works of art stolen long ago to the rightful Holocaust survivors or their families.

IX. CONCLUSION

Art attempts to find in the universe, in matter as well as in the facts of life, what is fundamental, enduring, essential.

*Saul Bellow*¹⁹⁹

The heinous crimes committed by the Nazis will never be forgotten. Millions of innocents were massacred during the Holocaust. Those who survived lost everything they had ever owned. The collections of private citizens and families who collected art for their own enjoyment were raided by Hitler and his henchmen.²⁰⁰

Works owned by Alphonse Kann,²⁰¹ Paul Rosenberg,²⁰² and Eugen Gutmann²⁰³ have been documented to have been part of their private art collections before Hitler confiscated these paintings. Current authors have extensively researched and carefully traced the routes of individual paintings which were once privately owned by Holocaust survivors or their families.²⁰⁴ Now artworks owned by these families have surfaced in United States museums as well as in the hands of private collectors.

198. See Mandell, *supra* note 2, at D16 (stating that the Swiss, German and French governments have only recently declassified World War II documents); see also Rosenberg, *supra* note 145, at C3 (discussing the Truman library in Missouri releasing previously unseen documents which may help with the return of assets to survivors).

199. See BARTLETT, *supra* note 1, at 887. The quoted material is from a speech given by Saul Bellow on his acceptance of the Nobel prize for literature in 1976.

200. Hitler collected art either for his own private possession or to start a museum in Germany. FELICIANO, *supra* note 5, at 15-16. That art that he classified as "degenerate" was either destroyed or sold to aid the German War effort. See *id.* at 20-21.

201. "Smoke Over the Roofs" by Leger. See *supra* note 7.

202. "Odalisque" by Matisse. See *supra* notes 9, 14.

203. "Landscape With Smokestacks" by Degas; see Sforza, *supra* note 74, at A10.

204. See FELICIANO, *supra* note 5; see also NICHOLAS, *supra* note 19. Each of these authors extensively treats the collections of the Kann and Rosenberg families and indicates the art they owned.

Legal remedies in the United States each have their own deficiencies when applied to the return of artwork stolen long ago. The doctrine of *replevin* requires the exercise of “due diligence” by prior owners searching for their artwork, as well as the money to bring lengthy and expensive litigation.²⁰⁵ This requirement of “due diligence” is not suitable legal redress for those seeking the return of artwork stolen over fifty years ago. How may they prove diligence? Criminal laws such as the Act do not provide for civil redress or the return of goods, but seek only to punish the intentional act of theft.²⁰⁶ The *Unidroit* Convention, to which the United States is a party, does not require due diligence and presumes the property to be stolen, rather than employing the common presumption that the current owner is innocent. However, this remedy has the impediment of a blanket fifty-year statute of limitations for claims brought by individuals, while protecting cultural collections of foreign nations indefinitely.²⁰⁷

The solution to this quagmire now rests solely on the shoulders of the newly created Holocaust Assets Commission.²⁰⁸ This Commission may work with private organizations, like the World Jewish Congress, to find and retrieve documentation to help locate and return the assets of victims of the Holocaust to the rightful owners or their heirs. The United States should join with those other countries establishing such commissions. This Commission should enlist the aid of learned museum curators and directors, art historians and educators in the field, as well as experts in the field of Holocaust history, to aid them in their work. The Association for Art Directors has announced that a task force has prepared guidelines for its members, urging them to handle ownership claims quickly in hopes of averting further congressional scrutiny and federal legislation.²⁰⁹ But private and voluntary efforts seem to be too little and too late.

205. See *supra* note 106 and accompanying text.

206. See *supra* notes 146-47 and accompanying text.

207. See *supra* note 168 and accompanying text.

208. See Holocaust Assets Commission Act of 1998, Pub. L. No. 105-86, 112 Stat. 611 (codified as amended at 22 U.S.C. § 1621 (1998)).

209. *All Things Considered, Art Directors Recommendations* (National Public Radio broadcast, June 4, 1998). The Association of Art Museum Directors announced the recommendations of a task force looking into art looted by Nazis during World War II that may now be in their museums. *Id.* This broadcast featured comments by the following persons: Felip [Philippe] De Montebello, Director of the Metropolitan Museum of Art; Malcolm Rogers, Director of the Boston Museum of Fine Arts; and Constance Lowenthal, Member of Commission for Art Recovery of The World Jewish Congress. *Id.* Felip De Montebello stated that the “last thing museums want is federal regulation.” *Id.*

If legislation is necessary to expedite justice, the Commission should recommend it to the President, and Congress should adopt it as quickly as possible.²¹⁰ That legislation could set criteria for how a museum handles such claims as well as how it acquires its artwork. The art trade must comport with the proper conduct in handling, housing, displaying, and selling art that may have been taken by theft, smuggling, or war. The art trade should be on notice of the risks to them for failure to investigate the provenances of the works it sells. No longer should eyes be shut under the guise of enhancing a collection whether in a museum or in a private home.

As this century draws to a close, the United States must finally act responsibly and morally to correct an historic wrong and provide some comfort and justice to the rapidly aging and dwindling community of Holocaust survivors. The ability to spend money and wage a protracted legal battle should not be the criteria for replevin of family-owned art. We must ensure that these families receive restitution for their artwork and other possessions as expeditiously as possible. There is no statute of limitations on doing the right thing.

210. *Id.* The authority to investigate claims and enact legislation has been granted to the Commission.

